

STATES OF JERSEY



DRAFT CRIMINAL JUSTICE (YOUNG OFFENDERS) (JERSEY) LAW 201-

Lodged au Greffe on 20th May 2014
by the Minister for Home Affairs

STATES GREFFE



Jersey

DRAFT CRIMINAL JUSTICE (YOUNG OFFENDERS) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Home Affairs has made the following statement –

In the view of the Minister for Home Affairs, the provisions of the Draft Criminal Justice (Young Offenders) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator B.I. Le Marquand**

Minister for Home Affairs

Dated: 19th May 2014

REPORT

Introduction

1. Locking up children, young persons and young adults should always be a last resort. However, it is inevitable that some children, young persons and young adults will need to be deprived of their liberty, and their wellbeing is of primary importance.
2. The terms ‘child’, ‘young person’ and ‘young adult’ are all defined in the interpretation Article of the draft Law. A ‘child’ is a person who has reached the age of 10, but has not yet reached the age of 15. No reference is made throughout this Law to any child under the age of 10 because 10 is the age of criminal responsibility in Jersey (see Article 2 of the draft Law). A ‘young person’ is a person who has reached the age of 15 but has not reached the age of 18; and a ‘young adult’ is a person who has reached the age of 18 but is under 21.
3. The current management of children, young persons and young adults in custody can be improved upon, and the Children’s Policy Group (CPG), comprising the Ministers for Home Affairs, Education, Sport and Culture and Health and Social Services; together with the Chief Officers from those Departments and the Chief Probation Officer; and the Chairman of the Jersey Safeguarding Board, have considered how best to achieve this. In so doing, they took into account the Criminal Justice (Young Offenders) (Jersey) Law 1994, the Children (Jersey) Law 2002 and the Prison (Jersey) Law 1957.
4. Consideration was given as to whether or not the Criminal Justice (Young Offenders) (Jersey) Law 1994 (‘the 1994 Law’) should be extensively amended. However, on reflection it was decided that it would be preferable to replace the 1994 Law with the Draft Criminal Justice (Young Offenders) (Jersey) Law 201- (‘the draft Law’).
5. Many of the provisions that were contained in the 1994 Law remain in the draft Law. The main differences from the 1994 Law are in respect of Part 3 of the draft Law, which deals with Remand, and Part 4 of the draft Law which deals with the Young Person’s Placement Panel.
6. Key stakeholders have been consulted in the preparation of the draft Law. The policy principles were given early approval by the Children’s Policy Group and consultation has taken place with the Full Court, the Magistrate, the Health and Social Services Department, the Education, Sport and Culture Department and the Probation and After-Care Service. Employee representatives have been advised, and comments from the Education and Home Affairs Scrutiny Panel have been taken into account.

Background

7. There are currently 2 establishments in the Island that have the legal authority, subject to their particular age, to detain children, young persons and young adults in custody: Greenfields and La Moye Prison.
8. Greenfields is a secure, 8-bed unit that comes under the responsibility of the Minister for Health and Social Services. At the present time, there are 2 referral routes into Greenfields – a child or young person can be remanded to there by a criminal court if they are of compulsory school age.

9. Alternatively, a child or young person may be placed in Greenfields under a Secure Accommodation Order under the Children (Jersey) Law 2002 if it is felt necessary to prevent them from injuring themselves or others; or if they have a history of absconding and, if they abscond, are likely to suffer significant harm. A Secure Accommodation Order is a civil order made by the Royal Court following an application by the Minister for Health and Social Services.
10. The definition of compulsory school age is not straightforward and is defined in Article 2 of the Education (Jersey) Law 1999 as –
- (1) *For the purposes of this Law, a child is of compulsory school age throughout the period beginning on the first day of the school term in which the child's fifth birthday falls and ending on 30th June in the school year in which the child attains the age of 16 years, and the terms "below compulsory school age", "upper limit of compulsory school age" and "over compulsory school age" shall be construed accordingly.*
- (2) *For the purposes of this Article, the following periods in any school year are school terms –*
- (a) *the period beginning on 1st September and ending on 31st December;*
- (b) *the period beginning on 1st January and ending on 30th April; and*
- (c) *the period beginning on 1st May and ending on 31st August.*
11. The Jersey Prison Service, which is the responsibility of the Minister for Home Affairs, is able to accommodate remanded offenders who are over the age of compulsory schooling and sentenced young offenders from the age of 15. There is a Young Offender Institution at La Moye which is populated by male young people and young adults aged between 15 and 20.
12. There is no Young Offender Institution for female young people and young adults, and they have always been integrated into the adult female population. The practice of detaining female young people together with the adult female prison population was recently challenged in the Royal Court in Jersey and subsequently before the European Court of Human Rights ("ECtHR") in Strasbourg. The ECtHR challenge was defeated on a technical point and without a decision being made by the ECtHR on the merits of the challenge. Another challenge may be made in the future if this practice continues.

New provisions in the draft Law

13. Currently, the location for a child, young person or young adult in custody is automatically determined legislatively, i.e. by virtue of their age or whether they are on remand or convicted, and there is no flexibility. A child (i.e. under 15) would not be sent to La Moye and a young adult (i.e. over 18) would not be sent to Greenfields. The location to which a young person (i.e. between 15 and 17) is sent depends on whether they are of compulsory school age, as defined above.
14. Under the proposed changes introduced by the draft Law, it is intended that the most suitable location for a young person should be determined by the Young Person's Placement Panel ('the Panel') established under Part 4 of the Law. Article 22 gives the States the power to make Regulations concerning

the Panel, i.e. the appointment of members, the holding of meetings, rights of appeal against its decisions, its constitution, etc. It is anticipated that the Panel would be likely to comprise senior managers from relevant States departments and that there would be an independent chairperson from a child care background.

15. In accordance with Article 7 and Article 16 of the draft Law, Greenfields would be able to take children and young persons, both male and female, up to and including the age of 17; and the Young Offenders Institution would be able to take male young persons up to and including the age of 17 and male young adults aged 18 – 20. The criminal courts, when remanding or sentencing a young person, would simply remand them or sentence them to a period of youth detention without stipulating the location, subject to the system outlined below. Under Article 18(a), the Panel would make the decision as to whether they should go to Greenfields or La Moye. It is not intended that the courts should need to be involved in where a young person is ultimately located.
16. The functions of the Placement Panel are set out in Article 18 and include determining the appropriate place of custody for young persons remanded or sentenced to a period of youth detention. Under Article 19 the Panel should exercise its functions having decided what is in the best interests of the young person, and indeed of any other young person detained in the same place. Article 19(a)–(g) details what they shall have regard to in making those decisions. For example, taking into account all the factors in Article 19, the Panel could place a vulnerable 17 year-old young person, who has been convicted, in Greenfields; or, alternatively, place a disruptive or violent male child or young person of school age into the Young Offender Institution at La Moye. This flexibility does not currently exist, but would help to ensure that the needs of the young person were best met by placing them in the most suitable location for them.
17. In terms of where young persons would be placed, it is envisaged that the system would function on the basis that young persons ‘of school age’ would **ordinarily** be accommodated at Greenfields (although male young persons may also be sent to the Young Offenders Institution), whilst those young persons over the age of school age would **ordinarily** be sent to La Moye. The male young persons over school age would be sent to the Young Offenders Institution, whilst female young persons would be accommodated, as currently, with the adult females. This would be the default position and would relate to both those on remand and those sentenced.
18. Notwithstanding the default position, there will be some limited flexibility to deviate from the default position to respond to various circumstances. Under Article 10, the Prison Governor will have the power to move a male young adult or female young person to the Prison. In relation to female young persons, Article 10(3) sets out the circumstances in which a female young person can be moved to the Prison and requires that the Panel agree to any such move. Under Article 18, any move of a female young person to the Prison would need to be kept under regular review by the Panel, which could require the young person to be moved to an appropriate place of custody where that is appropriate.
19. The Law Officers’ Department has taken early advice from the Ministry of Justice (MoJ) Legal Advisers as to whether they consider that the proposals to detain accused and convicted children together in Greenfields as an

impediment to the Draft Young Offenders Law being granted Royal Assent. MoJ would take the view that accommodating accused and convicted children together falls within the qualification on the obligation in Article 10(2)(a) of the International Covenant on Civil and Political Rights, which permits accused and convicted persons to be detained together in “*exceptional circumstances*”. They appear to view the combination of the placement decision being made by the Panel and the population and resources of Jersey as amounting to such exceptional circumstances. MoJ recognise that when dealing with children there may be no other pragmatic and practical solution than to accommodate children detained for welfare reasons, on remand or following conviction together (as is the case in England and Wales as well as the Isle of Man).

20. In making the decision, the Panel would also have to have regard to the ‘mix’ of children and young persons in any location (Article 19(b)). Therefore, if there were a 12 year-old child in Greenfields it may not be appropriate for a 17 year-old young person, even if they are vulnerable, to be in Greenfields at the same time. The Panel can also move a young person from Greenfields to La Moye, and *vice versa*, if it was felt that this was the most suitable course of action, without having to refer the decision to the courts (Article 18(b)).
21. There will also be occasions when it is not possible for the Panel to convene in time to consider a placement, e.g. at the weekend or outside normal working hours. Article 16(3) provides for this eventuality: it is envisaged that “*the person who orders the person to be remanded in custody*” would be the duty Jurat. However, it is intended that the duty Jurat would have to consult with designated officers from the Children’s Service and the Prison to be able to place in either establishment given the presenting assessments for the young person and which took into account the needs of the other residents in each establishment. This would require the Panel to establish an ‘out of hours’ protocol under its terms of reference to allow this to happen.
22. There would be parity between Greenfields and La Moye in relation to length of sentence. That is to say, in terms of length of sentence actually served, there will be no benefit or detriment for a young person to serve their sentence in one facility rather than the other.
23. As detailed in the ‘background’, children and young persons of school age, who are on remand in respect of a criminal offence, can currently be housed in Greenfields. Under the new system, Greenfields would also hold children and young persons who have been convicted of an offence. Greenfields is staffed by Health and Social Services staff, who need to have the vices to detain these convicted children and young persons as only Prison Officers currently have that power. This is catered for in Schedule 2 of the draft Law which introduces a new Article 22A to the Children (Jersey) Law 2002 as follows –

“22A Use of secure accommodation for orders under the Criminal Justice (Young Offenders) (Jersey) Law 201-

- (1) *A young person who has been sentenced to youth detention or who is remanded in custody under the Criminal Justice (Young Offenders) (Jersey) Law 201- and in respect of whom the Young Person’s Placement Panel has determined that the young person shall be detained in secure accommodation, shall be treated for the purposes of this Law as a child who is being looked after by the Minister and shall be kept in*

accommodation provided for the purposes of restricting liberty.

(2) *The accommodation provided under paragraph (1) may be the same accommodation as that provided under Article 22.”.*

24. It is important to note that any child or young person subject to a Secure Accommodation Order would only ever be accommodated in Greenfields.

Financial and manpower implications

25. Given the present low level of youth offending, and the small number of young offenders requiring either a custodial remand or sentence, together with present staffing levels in care homes, the Health and Social Services Department will manage its resources so as to ensure that Greenfields is staffed according to the numbers and make-up of the resident population. This is not the case for the Education, Sport and Culture Department (ESC). Their requirement is to provide an educational provision for any pupil of statutory school age within Greenfields, and they staff the Alternative Curriculum to provide for this occasional demand. Any post-statutory educational need would require ESC to provide additional resources with a different knowledge and skill set. Assuming that the number of juveniles, above school-leaving age, placed in Greenfields by the Panel is very few, ESC will aim to absorb any additional demand within the facilities provided for those children under school-leaving age. However, should there be a prolonged increase in occupancy rates such that undue pressure was placed on the care and education system as a whole, then those Departments would need to consider a request for additional staff resources through the Medium Term Financial Plan process.

Human Rights

26. The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

**Human Rights Notes on the draft Criminal Justice (Young Offenders)
(Jersey) Law 201**

These Notes have been prepared in respect of the draft Criminal Justice (Young Offenders) (Jersey) Law 201- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law raises human rights issues in so far as it permits –

- (a) remanded and convicted young persons to be detained together; and
- (b) in very limited circumstances, the detention of female young persons in the adult prison.

The human rights issues raised by these provisions and the reasons why the draft Law is compatible with relevant international human rights obligations are set out below.

Detention of remanded and convicted persons together

The draft Law includes, *inter alia*, provision that will enable young persons (i.e. those aged 15 or over, but under 18) who have been convicted and sentenced to a period of youth detention, to be accommodated in the same secure accommodation as children (i.e. persons under 18) who are lawfully remanded or detained in secure accommodation for welfare reasons pursuant to the Children (Jersey) Law 2002. The secure accommodation unit that these children and young people may be detained in is known as Greenfields and is a secure 8-bed unit that comes under the responsibility of the Minister for Health and Social Services. At present, Greenfields is only used to accommodate children for welfare reasons or those on remand who are under school-leaving age. Residents normally associate with one another regardless of their reasons for being there, and it would not be feasible to segregate convicted and unconvicted children for a number of practical reasons.

These arrangements raise an issue with regard to compliance with the obligation in Article 10(2)(a) of the International Covenant on Civil and Political Rights (“**ICCPR**”), which provides that –

“2.(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;”

No reservation has been entered in respect of this obligation in the ICCPR either in respect of the UK or in respect of the Crown Dependencies. However, the accommodation of accused and convicted children together, in the circumstances permitted by the draft Law, may properly be viewed as falling within the qualification on this obligation that permits accused and convicted persons to be detained together in “*exceptional circumstances*”. In this regard it is relevant that Jersey’s population and resources mean there may be no other practical solution to the accommodation needs of these young persons. Also that the placement decision in each case will be made by the Young Person’s Placement Panel (“**the Panel**”), which will provide some assurance as to the propriety of the placement decision from a welfare perspective.

It is perhaps relevant to note that in both the United Kingdom and the Isle of Man, secure accommodation is used for the detention of young persons who have been convicted of offences and young persons who are detained on remand or for their welfare.

Place of detention for female young persons

At present, female children over school-leaving age who are remanded or sentenced to a period of youth detention are detained in the adult prison. This is because the number detained is insufficient to make the establishment of a female young offender institution viable, and it is not lawful at present to detain them in secure accommodation. The detention of female children together with adults in the prison raises issues with regard to compliance with a number of international obligations, including those found in the UN Convention on the Rights of the Child (“**UNCRC**”) (which is soon to be extended to Jersey), the ICCPR, and Articles 3 (inhumane and degrading treatment) and 5 (right to liberty) of the ECHR. The relevant provisions and their limitations are briefly set out below, followed by an explanation as to why the provisions of the draft Law are compatible with them.

With regard to the UNCRC, Article 37(c) provides that –

“(c) ...every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.”

However, the UK has entered a reservation in respect of the application of Article 37(c) UNCRC to the UK's dependent territories. That reservation provides that –

“Where at any time there is a lack of suitable detention facilities or where the mixing of adults and children is deemed to be mutually beneficial, the United Kingdom, in respect of each of its dependent territories, reserves the right not to apply article 37(c) in so far as those provisions require children who are detained to be accommodated separately from adults.”

Similarly, Article 10(2)(b) and (3) of the ICCPR provide, so far as is relevant, that –

“(b) Accused juvenile persons shall be separated from adults...”
(3) ...Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”

However, again there is a reservation in respect of this obligation which states that –

“Where at any time there is a lack of suitable prison facilities or where the mixing of adults and juveniles is deemed to be mutually beneficial, the Government of the United Kingdom reserve the right not to apply article 10(2)(b) and 10(3), so far as those provisions require juveniles who are detained to be accommodated separately from adults”.

Article 3 of the ECHR provides that –

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

The pre- and post-trial detention of a young person in an adult prison, may, together with other negative factors, potentially give rise to a violation of Article 3 of the ECHR. However, that would only be the case if the treatment of the young person taken as a whole amounts to inhuman and degrading treatment of sufficient severity.

Article 5(1) of the ECHR provides, so far as it is relevant, that –

- “1. *Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- (a) *the lawful detention of a person after conviction by a competent court;*
 - ...
 - (d) *the detention of a minor by lawful order for the purpose of educational supervision ...”*

To be compatible with Article 5(1) of the ECHR, a deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f), be “*lawful*” by reference to national law. Any deprivation of liberty should also be in keeping with the purpose of protecting the individual from arbitrariness. This later requirement means that there should be some relationship between the exception relied on and the place and conditions of detention.

The draft Law addresses the risk of breaching these international obligations by ensuring that the appropriate place of custody for a female young person remanded or sentenced to youth detention will be secure accommodation rather than the prison. Under the draft Law, the detention of a female young person in the prison will only occur exceptionally. Under Articles 10(3) (temporary transfer to prison) and 16(3)(b) (remand pending a decision of the Panel) a female young person will only be detained in the adult prison where that is in the best interests of the young person or another person with whom they may be accommodated, or where a place in secure accommodation is not available.

Further, there are important safeguards in place before a female young person could be accommodated in prison. A transfer to the prison will only take place with the agreement of the Panel and the Panel must conduct regular reviews under Article 18(c) of the draft Law following any such transfer. Those reviews will be conducted with a view to transferring the female young person to secure accommodation as soon as that becomes appropriate. The temporary remand of a female young person in the prison will only occur where the court, or any person who orders that the person be remanded, having regard to all the circumstances relevant at the time, considers that the prison is more suitable for meeting her particular needs or that there is no suitable secure accommodation available.

By limiting the powers to detain female young persons in the prison, as the draft Law does, the risk of any circumstances arising where an individual is detained in breach of the applicable international obligations and the reservations applying to them is minimised and managed so far as is practicable in Jersey. The draft Law should then be viewed as compatible with the ECHR and the other relevant international obligations referred to above.

In addition to the above, it is perhaps relevant to note that Article 14 of the ECHR provides that –

“The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The difference in treatment between female and male young persons provided for in the draft Law may engage Article 14 of the ECHR, since it may amount to a difference in treatment based on sex falling within the ambit of, *inter alia*, Article 5 of the ECHR. However, the differences in the treatment of male and female young

persons under the draft Law have an objective and reasonable justification. They pursue the legitimate aim of ensuring that appropriate, high-quality accommodation is provided to both sexes from limited funds and in view of the small number of juvenile females requiring such accommodation. Consequently, they do not amount to unlawful discrimination for the purposes of Article 14 of the ECHR.

Explanatory Note

This Law makes provision for the sentencing and custody of persons under the age of 21 years who have been convicted of, or charged with, criminal offences.

Part 1 – Opening

Article 1 is an interpretation provision. In particular it defines “child” as a person who is aged 10 years or over and under 15 years; a “young person” as a person aged 15 years or over and under 18 years; and “young adult” as a person aged 18 years or over and under 21.

Part 2 – Persons under 21 – Criminal responsibility, sentencing and custody

Article 2 provides that no person under the age of 10 years can be guilty of an offence.

Article 3 prohibits a court from passing a sentence of imprisonment on a person under the age of 21 years. However the Article makes clear that this does not preclude such a person from serving the whole or part of a sentence of youth detention in accordance with the provisions of this Law. “Prison” is defined in Article 1 to mean the prison at La Moye, any other prison which may be built in Jersey or any building temporarily designated as a prison under Article 19(2) of the Prison (Jersey) Law 1957. Under this definition “prison” does not include a young offender institution (even though the latter may be physically located in the same building as a prison).

Article 4 makes provision for the passing of sentences of youth detention on young persons and young adults. A sentence of youth detention may be passed on a young person or young adult convicted of a criminal offence only if the offence would be punishable by a sentence of imprisonment in the case of a person aged 21 years or over. However this does not itself give sufficient grounds for passing a sentence of youth detention: a court may pass such a sentence only for reasons specified in Article 4, that is, a history of failure in responding to non-custodial sentences, the need to protect the public from serious harm or the seriousness of the offence. In any event, except where *Article 5* applies (see below), a court must not pass a sentence of youth detention for a term exceeding 12 months. A court must state in open court its reasons for imposing a sentence of youth detention.

Article 5 makes provision where a person under the age of 21 years is convicted of an offence carrying a mandatory life sentence or where a person under the age of 21 years is convicted of an offence carrying a discretionary sentence of at least 14 years. In such a case, the person is detained in such place and conditions as the Secretary of State may direct.

Article 6 makes provision for a person aged 17 years or over but under the age of 21 years to be sentenced to youth detention for failure to pay a sum due, such as a fine. This applies only where a person aged 21 years or over could have been sentenced to imprisonment for such an offence. Such a sentence may be passed only if the court considers that no other sentence is appropriate and the reasons must be stated in open court.

Article 7 provides that a male young adult must serve a sentence of youth detention in a young offender institution and that a female young adult must serve a sentence of youth detention in the prison. However in the case of a young person, a court must order the person to be detained in an appropriate place of custody. An “appropriate place of custody” is defined in *Article 1* to mean secure accommodation in the case of a male or female young person, or in the case of a young male person only, a young offender institution. The Young Person’s Placement Panel (“Panel”) determines the

appropriate place of custody in exercise of its functions under Article 18 of the draft Law. (The role of the Panel is explained in more detail below under Part 4.) A “young offender institution” is defined in *Article 1* to mean a young offender institution provided by the Minister for Home Affairs under the Prison (Jersey) Law 1957. “Secure accommodation” is defined in *Article 1* to mean accommodation provided under Article 22 of the Children (Jersey) Law 2002 for the purpose of restricting liberty. If a court makes an order of youth detention in respect of a young person before the Panel can determine the appropriate place of custody, the young person must be detained in secure accommodation unless, in the opinion of the court, a young offender institution is considered more appropriate in the case of a male young person or, in the case of a female young person, the prison is considered more appropriate. In such a case, without prejudice to the exercise of powers under Article 10 (which allows transfer to the prison in certain circumstances), the Panel must determine the appropriate place of custody for the young person as soon as practicable and, in any event, within 72 hours.

Article 8 sets out the information which a court must take into account in deciding whether to pass a sentence of youth detention. Such information concerns the circumstances of the offence and character of the offender. The Article also sets out the extent to which a probation report must be obtained.

Article 9 makes provision for a person sentenced to youth detention for 4 months or more to be supervised by a probation officer upon release. This Article also makes provision for a person who breaches the requirements of a supervision order to be guilty of a criminal offence for which a custodial sentence may be imposed.

Article 10 sets out circumstances in which a young adult or young person may be moved to the prison to serve a sentence of youth detention or a period of remand in custody. The Governor of the prison (“Governor”) may require a male young adult (who would otherwise be detained in a young offender institution) to be moved to the prison if the Governor considers, by reason of the person’s behaviour, that it is not in the person’s interests or in the interests of other persons detained in a young offender institution, to detain the person in such an institution or that the prison better meets the needs of the particular person having regard to all the circumstances of the case. If the person has attained the age of 18 whilst on remand in custody or serving a sentence of youth detention, such a move can only be made after consultation with the Panel. In the case of a female young person, the Governor may require such a person (who would otherwise be detained in secure accommodation) to be moved to the prison for broadly the same reasons as a young male adult would be moved to the prison, if the Panel is of the opinion that such reasons exist. Such a move can be made only with the Panel’s agreement and after the giving of written reasons. However in cases of urgency, the Governor may require the move without the Panel’s opinion or agreement or written reasons having been given, but these must be obtained/given as soon as possible after the move has taken place. Where a female young person is moved to the prison in such circumstances, the Panel must, under *Article 18*, review the initial decision within a week of the move and, thereafter at intervals not exceeding 1 month.

Finally, *Article 10* also allows the Governor to require a young adult or young person who is required to be detained in prison or a young offender institution under this Law to be moved to a prison medical facility or hospital for medical treatment.

Article 11 makes provision for the attendance in court of the parent or guardian of a child or young person who is charged with an offence. If the parent or guardian is resident in Jersey, he or she is required to attend the court; if not so resident, the parent or guardian may be required to attend.

Article 12 makes provision for a court to order a parent or guardian to pay a fine or pay costs that are imposed on a child or young person or to give security for good behaviour.

Article 13 requires any offences committed by a child to be disregarded as evidence in respect of any offence committed or alleged to have been committed by the person when adult (i.e. 21 years or over) and prevents an adult from being required to answer any questions in proceedings about any offence committed whilst a child.

Article 14 provides that, for the purposes of this Law, a person's age shall be deemed to be that which appears to the court to be a person's age, taking into account any available evidence.

Article 15 provides that nothing in this Law derogates from provisions in the Children (Jersey) Law 2002 and the Criminal Justice (Evidence of Children) (Jersey) Law 2002 relating to the presence in court and giving of evidence by persons under the age of 18 years.

Part 3 – Remand

Article 16 makes provision for where a child, young person or young adult must be detained if remanded in custody. A child must be remanded in secure accommodation; a young person must be remanded in an “appropriate place of custody” as determined by the Panel (see *Article 7* above for the definition of “appropriate place of custody”); a male young adult must be detained in a young offender institution and a female young adult must be detained in the prison. In the case of a young person, if the person is ordered to be remanded before the Panel can make a decision, the young person must be remanded to secure accommodation unless, in the opinion of the person who remands the person, a young offender institution is considered more appropriate in the case of a male young person or, in the case of a female young person, the prison is considered more appropriate. In such a case, without prejudice to the exercise of powers under *Article 10* (which allows transfer to the prison in certain circumstances), the Panel must determine the appropriate place of custody for the young person as soon as practicable and, in any event, within 72 hours. A person who helps another to escape from custody whilst in remand or, without lawful authority, removes a person from such a place or hides a person who has so escaped, is guilty of an offence and liable to a fine and maximum term of 2 years imprisonment.

Part 4 – Young Person's Placement Panel

Article 17 provides for the establishment of a Young Person's Placement Panel (“Panel”).

Article 18 sets out the Panel's functions. Its main function is to determine an “appropriate place of custody” (see *Article 7* above) for young persons who are sentenced to youth detention or remanded in custody and to review such decisions. In the case of a female young person who is detained in prison in exercise of powers under *Article 10* or 16, the Panel must review the initial decision within a week and thereafter at intervals of not more than a month. If the Panel thinks appropriate, the person can be moved to an appropriate place of custody.

Article 19 sets out the criteria which the Panel must take into account in exercise of its functions under *Article 18*.

Article 20 allows the Minister for Home Affairs to direct the Panel concerning policies and criteria which the Panel must take into account when exercising its functions.

Article 21 provides for the Panel to have all the powers it needs to perform its functions.

Article 22 provides for the States to make Regulations concerning all matters concerning the governance of the Panel, including appointment of members, rights of appeal against decisions and its constitution.

Article 23 provides that neither the Panel, or any member of the Panel, the Youth Court, or any member of the Youth Court, the Governor or anyone acting on his or her behalf, is liable in damages for anything done or omitted to be done in discharge of its functions under this Law, unless such act or omission is in bad faith or is found to be incompatible with a Convention right under the Human Rights (Jersey) Law 2000.

Part 5 – Youth Court

Article 24 provide for the continuation of the Youth Court established under the Criminal Justice (Young Offenders) (Jersey) Law 1994 (“1994 Law”) and gives effect to the *Schedule*. The *Schedule* makes provision for the constitution and procedures of the Youth Court. These provisions reflect those in the 1994 Law except that it is no longer a requirement that a person other than the chairman of the Youth Court must be a woman, provided that there is one woman (who may be the chairman) who is a member of the Youth Court.

Article 25 provides that the Youth Court’s powers are exercisable in respect of children (10 to 14 years inclusive) and young persons (15 to 17 years inclusive).

Article 26 makes provision for the Youth Court to exercise the same powers as are vested in the Magistrate’s Court and for circumstances when a case relating to a child or young person may be heard by the Magistrate’s Court, such as where the child or young person is jointly charged with someone who is aged 18 years or over.

Article 27 makes provision for the procedure of the Youth Court.

Article 28 makes provision for when the Youth Court can hear cases and deal with other matters relating to a person who is aged 18 years or over. Those circumstances are where the Youth Court has started proceedings in the belief that the person in question is under 18 years or where the person turns 18 years whilst subject to a probation order, community service order or conditional discharge.

Article 29 provides for appeals from the Youth Court to be made to the Youth Appeal Court and for the constitution of that Court.

Part 6 – repeals, transitional and savings provisions and consequential amendments

Article 30 repeals the Criminal Justice (Young Offenders) (Jersey) Law 1994.

Article 31 amends the Children (Jersey) Law 2002 in respect of secure accommodation by making specific provision for young persons sentenced to youth detention.

Article 32 allows the States to make Regulations amending any enactment in consequence of any provision of this Law and to make any transitional, saving or consequential provisions they consider necessary or expedient, including amendment of this Law, in respect of any provision of this Law.

Article 33 sets out the title of the Law and provides that it will come into force by Appointed Day Act.



Jersey

DRAFT CRIMINAL JUSTICE (YOUNG OFFENDERS) (JERSEY) LAW 201-

Arrangement

Article

PART 1	19
OPENING	19
1 Interpretation	19
PART 2	21
PERSONS UNDER 21 – CRIMINAL RESPONSIBILITY, SENTENCING AND CUSTODY	21
2 Age of criminal responsibility	21
3 Prohibition on sentences of imprisonment for children, young persons and young adults.....	21
4 Sentences of youth detention for young persons and young adults.....	21
5 Custody where life sentence fixed by law and sentences for serious offences	22
6 Sentence of youth detention for default	22
7 Place of custody for young persons and young adults sentenced to youth detention.....	23
8 Matters affecting a court’s power to pass a sentence of youth detention	24
9 Supervision of young offenders after release from youth detention	24
10 Power of Governor to move young adults and young persons in certain circumstances	25
11 Attendance at court of parents of child or young person brought before court.....	26
12 Power to order parent or guardian to pay fine, etc.	27
13 Offences committed by a child.....	27
14 Determination of age	28
15 Saving with regard to court proceedings involving children.....	28
PART 3	28
REMAND	28
16 Remand of children, young persons and young adults.....	28

PART 4 **29**

YOUNG PERSON’S PLACEMENT PANEL 29

17 Young Person’s Placement Panel 29

18 Functions of the Panel..... 29

19 Matters to be taken into account by the Panel when exercising its
functions..... 30

20 Functions of the Minister 30

21 Powers of the Panel..... 30

22 States to make Regulations concerning the Panel..... 30

23 Liability..... 31

PART 5 **31**

THE YOUTH COURT 31

24 Youth Court 31

25 Persons to whom this Part applies 31

26 Jurisdiction of Youth Court 31

27 Procedure in Youth Court 32

28 Miscellaneous provisions as to powers of Youth Court 32

29 Appeals from Youth Court..... 33

PART 6 **33**

**REPEALS, TRANSITIONAL AND SAVINGS PROVISIONS AND
CONSEQUENTIAL AMENDMENTS** 33

30 Repeal of the Criminal Justice (Young Offenders) (Jersey) Law 1994..... 33

31 Children (Jersey) Law 2002 amended 33

32 Consequential amendments, savings and transitional provisions 33

PART 7 **34**

CLOSING 34

33 Citation..... 34

SCHEDULE **35**

CONSITUTION AND PROCEDURES OF YOUTH COURT 35

1 Appointment of members of Youth Court 35

2 Proceedings 35

3 Decisions of Youth Court 35



Jersey

DRAFT CRIMINAL JUSTICE (YOUNG OFFENDERS) (JERSEY) LAW 201-

A LAW to replace the Criminal Justice (Young Offenders) (Jersey) Law 1994 and to make provision for the establishment of a Young Person's Placement Panel in relation to the detention of persons under 18 years and for connected purposes.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

OPENING

1 Interpretation

In this Law, unless the context otherwise requires –

“appropriate place of custody” means –

- (a) secure accommodation in the case of a male or female young person; or
- (b) in the case of a male young person only, a young offender institution,

as determined by the Panel in exercise of its functions under Article 18;

“child” means a person who has attained the age of 10 years and has not attained the age of 15 years;

“community service order” means an order made under the Criminal Justice (Community Service Orders) (Jersey) Law 2001¹;

“Governor” has the same meaning as in the Prison (Jersey) Law 1957²;

“guardian” includes a person who, in the opinion of the court hearing the case in which a person under the age of 18 years is concerned, has for the time being care of that person;

“Minister” means the Minister for Home Affairs;

“Panel” means the Young Person’s Placement Panel established under Article 17;

“prison” or “the prison” means –

- (a) the States of Jersey Prison at La Moye, excluding such part that is a young offender institution;
- (b) any other prison which may be built in Jersey; or
- (c) any building or part of a building designated to be a prison under Article 19(2) of the Prison (Jersey) Law 1957;

“Probation Law” means the Loi (1937) sur l’atténuation des peines et sur la mise en liberté surveillée³;

“probation officer” means a *délégué* appointed under Article 7 of the Probation Law;

“probation order” means an order made under the Probation Law;

“remand” refers to detaining a child, young person or young adult in custody pursuant to –

- (a) a court order; or
- (b) a warrant issued by the Bailiff or a Jurat,

where such child, young person or young adult has not been convicted of an offence or who, having been convicted, has not been sentenced;

“secure accommodation” has the same meaning as in Article 22 of the Children (Jersey) Law 2002⁴;

“young adult” means a person who has attained the age of 18 years and has not attained the age of 21 years;

“young offender institution” means such part of the States of Jersey Prison at La Moye that is a young offender institution provided by the Minister under Article 27 of the Prison (Jersey) Law 1957 or any other building or part of a building that is so provided;

“young person” means a person who has attained the age of 15 years and has not attained the age of 18 years;

“Youth Court” means the Court continued under Article 24; and

“youth detention” means a sentence of youth detention imposed under any of the following –

- (a) Article 4(1);
- (b) Article 6(1) or (4); or
- (c) Article 9(5) (by virtue of Article 9(6)(b)).

PART 2**PERSONS UNDER 21 – CRIMINAL RESPONSIBILITY, SENTENCING
AND CUSTODY****2 Age of criminal responsibility**

It shall be conclusively presumed that no person under the age of 10 years can be guilty of an offence.

3 Prohibition on sentences of imprisonment for children, young persons and young adults

- (1) No court shall pass a sentence of imprisonment on a person under the age of 21 years.
- (2) Nothing in paragraph (1) precludes a person under the age of 21 years serving the whole or part of a sentence of youth detention in a prison in accordance with the provisions of this Law.

4 Sentences of youth detention for young persons and young adults

- (1) Subject to Article 5 and to the following provisions of this Article, where a person who is a young person or a young adult is convicted of an offence which is, in the case of a person aged 21 years or over, punishable with imprisonment, the court may pass a sentence of youth detention.
- (2) A court shall not pass a sentence of youth detention unless it considers that no other method of dealing with the person is appropriate because it appears to the court that –
 - (a) the person has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them;
 - (b) only a custodial sentence would be adequate to protect the public from serious harm from the person; or
 - (c) the offence or the totality of the offending is so serious that a non-custodial sentence cannot be justified,and the court shall state in open court its reasons for imposing a sentence of youth detention and shall explain to the person that on the person's release the person may be subject to a period of supervision in accordance with Article 9.
- (3) Subject to paragraph (6), the maximum term of a sentence of youth detention that a court may impose is the same as the maximum term of imprisonment (including a maximum term of imprisonment for life) which a court could impose on a person aged 21 years or over for the same offence.
- (4) A court may pass consecutive sentences of youth detention in the same way as consecutive sentences of imprisonment.

- (5) Where an offender serving a sentence of youth detention is aged 21 years or over and is convicted of one or more further offences for which the offender is liable to imprisonment, the court may pass one or more sentences of imprisonment to run consecutively to the sentence of youth detention.
- (6) Notwithstanding paragraphs (3), (4) and (5), but subject to Article 5, a court shall not pass on any one occasion a sentence or sentences on a young person the effect of which would be that the offender would on that occasion be sentenced to a term of youth detention exceeding 12 months and so much of any such term for which an offender is sentenced as exceeds 12 months shall be treated as remitted.

5 Custody where life sentence fixed by law and sentences for serious offences

- (1) Where a child, young person or young adult is convicted of murder or any other offence for which the sentence is fixed by law as imprisonment for life, the court shall sentence the person –
 - (a) to custody for life if it appears to the court that, at the time the offence was committed, the person had attained the age of 18 years; or
 - (b) to be detained during her Majesty's pleasure if it appears to the court that, at the time the offence was committed, the person was under the age of 18 years.
- (2) A person sentenced under paragraph (1)(b) shall be detained in a place and under such conditions which the Secretary of State may direct, and pending those directions shall be detained in such place and under such conditions as the Royal Court shall direct.
- (3) Where –
 - (a) a young person is convicted of any offence that is punishable, in the case of a person aged 21 years or over, with imprisonment for 14 years or more;
 - (b) the offence is not an offence for which the sentence is fixed by law; and
 - (c) the court is of the opinion that none of the other methods in which the case may legally be dealt with is suitable,the court may sentence the offender to be detained for such period, not exceeding the maximum term of imprisonment for which the offence is punishable in the case of a person aged 21 years or over, as may be specified in the sentence.
- (4) Where a sentence under paragraph (3) has been passed, the person so sentenced shall be detained in such place and under such conditions as the Secretary of State may direct, and pending those directions shall be detained in such place and under such conditions as the Royal Court shall direct.

6 Sentence of youth detention for default

- (1) Where in the case of a person aged 21 years or over a court could –

- (a) fix a term of imprisonment in the event of default of payment of a fine, a compensation order or a sum due under a recognizance;
- (b) commit the person to prison as the result of such default;
- (c) commit the person to prison for contempt of court or any kindred offence,

the court may, in the case of a person who has attained the age of 17 years but is under the age of 21 years, sentence the person to youth detention for a term not exceeding the term of imprisonment.

- (2) A court shall not sentence a person to youth detention under paragraph (1) unless it is of the opinion that no other method of dealing with the person is appropriate and it states its reasons in open court.
- (3) Articles 4, 5 and 6 of the Criminal Justice (Jersey) Law 1957⁵ and Articles 3 and 5 of the Criminal Justice (Compensation Orders) (Jersey) Law 1994⁶ shall apply as if –
 - (a) references to imprisonment were references to youth detention under this Article;
 - (b) in the case of a young person or young adult detained in a young offender institution, references to the Articles to the prison were construed to refer to the young offender institution; and
 - (c) in the case of a young person detained in secure accommodation, references to the prison were to that secure accommodation and references to the prison governor were to the person in charge of managing the secure accommodation.
- (4) Notwithstanding anything in Article 5 of the Criminal Justice (Jersey) Law 1957 or Article 5 of the Criminal Justice (Compensation Orders) (Jersey) Law 1994, where a court has made an order under either Article 4 of the Criminal Justice (Jersey) Law 1957 or, as the case may be, Article 3 of the Criminal Justice (Compensation Orders) (Jersey) Law 1994, in respect of a person under the age of 21 years and that person is in default of that order, the officer responsible for the recovery of the fine or the sum due under the recognizance shall bring the person before the court which made the order and the court, after making such enquiry into the reasons for the default as appears to it to be requisite may, either –
 - (a) order that the person shall forthwith serve the sentence of youth detention for the term which has been fixed previously; or
 - (b) make such other order with respect to the person as appears to be just.

7 Place of custody for young persons and young adults sentenced to youth detention

- (1) Where a court orders a young adult to be sentenced to youth detention, the court shall order the person to be detained –
 - (a) in the case of a male young adult, in a young offender institution; or
 - (b) in the case of a female young adult, the prison.

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- (2) Where a court orders a young person to be sentenced to youth detention, the court shall order the person to be detained in an appropriate place of custody.
 - (3) If a young person is required to be detained in an appropriate place of custody before a decision can be taken by the Panel determining the appropriate place of custody, the young person shall, pending such decision, be remanded to secure accommodation unless, in the opinion of the court, having regard to all the relevant circumstances at the time –
 - (a) in the case of a male young person, a young offender institution is considered to be more suitable for meeting his particular needs, including where no accommodation, or no suitable accommodation, is available in secure accommodation for him; or
 - (b) in the case of a female young person, the prison is considered to be more suitable for meeting her particular needs, including where no accommodation, or no suitable accommodation, is available in secure accommodation for her.
 - (4) Without prejudice to the exercise of powers under Article 10, the Panel shall determine the appropriate place of custody for a young person who is detained in accordance with paragraph (3) as soon as reasonably practicable and, in any event, within 72 hours or such other period as the Minister may specify by Order, from the time the young person is so detained.

8 Matters affecting a court's power to pass a sentence of youth detention

- (1) For the purpose of determining whether there is an appropriate method of dealing with an offender other than by passing a sentence of youth detention the court shall obtain and consider information about the circumstances and shall take into account information before the court which is relevant to the offender's character and physical and mental condition, and in particular the court shall, unless it considers it unnecessary to do so in a particular case, obtain a report on the offender from a probation officer.
- (2) If the Youth Court or the Magistrate's Court imposes a sentence of youth detention without having obtained a report from a probation officer it shall state in open court the reasons why it considered the report unnecessary.

9 Supervision of young offenders after release from youth detention

- (1) Where a person who has been sentenced to a term of youth detention of 4 months or more is released from custody the person shall on being so released be under the supervision of a probation officer.
- (2) The period of supervision under paragraph (1) shall end with –
 - (a) the date on which the person would have been released from custody if the person had not been granted remission under the Prison (Jersey) Law 1957; or
 - (b) the person's 22nd birthday,

whichever is sooner, but in any event shall not extend more than 12 months from the date of the person's release.

- (3) While a person is under supervision the person shall comply with such written requirements as the Minister, after consultation with that person's supervisor, shall notify to the person.
- (4) The Minister may, after consulting with the person's supervisor, at any time modify or cancel any of the requirements notified in accordance with paragraph (3) and shall give written notice to the person under supervision of any such cancellation or modification.
- (5) If a person who is subject to supervision under this Article fails without reasonable excuse to comply with any requirement or modified requirement notified to the person under paragraph (3) or (4) the person shall be guilty of an offence and liable to –
 - (a) a fine of level 2 on the standard scale; or
 - (b) an appropriate custodial sentence for a period of 30 days.
- (6) In paragraph (5) "appropriate custodial sentence" means a sentence –
 - (a) of imprisonment if the offender is aged 21 years or over when the offender is sentenced; or
 - (b) of youth detention in –
 - (i) an appropriate place of custody in the case of an offender who is a young person when sentenced,
 - (ii) a young offender institution in the case of an offender who is a male young adult when sentenced, or
 - (iii) the prison in the case of an offender who is a female young adult when sentenced.
- (7) A person released from a custodial sentence passed under paragraph (5) shall not be liable to a period of supervision in consequence of the person's conviction under that paragraph.
- (8) A person's conviction under paragraph (5) shall not affect any liability to supervision to which the person was previously subject, and that liability shall accordingly continue until the end of the relevant period.

10 Power of Governor to move young adults and young persons in certain circumstances

- (1) The Governor may require a person who is a male young adult remanded in custody or serving a sentence of youth detention to be moved to the prison, either for a fixed term or for the remaining part of the person's sentence or for the period of the person's remand if the Governor is of the opinion that –
 - (a) by reason of that person's behaviour it is not in the person's interests or the interests of other persons detained in the same young offender institution as him, to detain him in such an institution; or
 - (b) having regard to all relevant circumstances, the prison better meets the needs of the particular person.

-
- (2) The Governor's powers under paragraph (1) shall be exercised after consultation with the Panel in respect of a male person who has attained the age of 18 years whilst on remand in custody or serving a sentence of youth detention.
 - (3) The Governor, with the agreement of the Panel and after the giving of written reasons, may require a female young person remanded in custody or serving a sentence of youth detention to be moved to the prison if the Panel is of the opinion that –
 - (a) by reason of the person's behaviour it is not in the person's interests or the interests of the other persons detained in the same secure accommodation as her to detain her in such accommodation; or
 - (b) having regard to all the relevant circumstances, the prison is more suitable for meeting her particular needs, including where no accommodation, or no suitable accommodation, is available in secure accommodation for her.
 - (4) In cases of urgency, a female young person may be moved under paragraph (3) before the agreement of the Panel or its opinion has been obtained or written reasons given, but the Panel's opinion must be obtained and written reasons for the move must be given as soon as possible after the move has taken place.
 - (5) The Governor may, if he or she considers it necessary in all the circumstances of the case, require a young adult or young person who is required to be detained in the prison or a young offender institution under this Law to be moved to a prison medical facility or to a hospital for medical treatment.
 - (6) Where a person is transferred under this Article, the person shall be in lawful custody during the period of the transfer and the period of transfer shall be treated, where applicable, for all purposes as a part of the person's sentence.

11 Attendance at court of parents of child or young person brought before court

- (1) Where a child or young person is charged with an offence or is for any other reason brought before a court, a person who is a parent or guardian of that person and who is resident in Jersey shall, and if not so resident may be required by the Court, to attend at the court before which the case is held or determined during all the stages of the proceedings.
- (2) Paragraph (1) does not apply if the court is satisfied that it would be unreasonable to require the parent or guardian's attendance or that the parent or guardian's attendance at any stage of the proceedings is unnecessary.
- (3) In relation to a person –
 - (a) for whom the Minister for Health and Social Services has parental responsibility; or
 - (b) whom that Minister is looking after (within the meaning of the Part 3 of the Children (Jersey) Law 2002),

the reference in paragraphs (1) and (2) to a person who is a parent or guardian of that person shall be construed as a reference to an officer of an administration of the States for which that Minister has responsibility.

- (4) Where a child or young person is apprehended, such steps shall be taken as may be practicable to inform at least one person whose attendance is, or may be, required under this Article of that fact and of the place and time at which the person's attendance at the court is or may be required.

12 Power to order parent or guardian to pay fine, etc.

- (1) Where a child or young person is charged with an offence for the commission of which a fine or costs may be imposed, if the court is of the opinion that the case would be best met by the imposition of a fine or costs, whether with or without any other punishment, the court may, and shall if the offender is a child, order that the fine or costs awarded be paid by a parent or guardian of the offender instead of by the offender, unless the court is satisfied –
 - (a) that no parent or guardian can be found; or
 - (b) that it would be unreasonable to make such an order having regard to the circumstances of the case.
- (2) In the case of a child or young person charged with an offence, the court may order a parent of the person or the person's guardian to give security for the person's good behaviour.
- (3) An order under this Article may be made against a parent or guardian who, having been required to attend, has failed to do so, but except in that case, no such order shall be made without giving the parent or guardian an opportunity of being heard.
- (4) Sums ordered to be paid by a parent or guardian, either under this Article or on forfeiture of security for good behaviour, may be recovered from the parent or guardian and shall be disposed of as if the order had been made on the conviction of the parent or guardian of the offence with which the offender was charged.
- (5) A parent or guardian may appeal against an order under this Article as if the parent or guardian had been convicted of the offence with which the offender was charged.

13 Offences committed by a child

- (1) In any proceedings for an offence committed or alleged to have been committed by a person who has attained the age of 21, any offence of which the person was convicted while a child shall be disregarded for the purposes of any evidence relating to the person's previous convictions.
- (2) A person to whom paragraph (1) applies shall not be asked, and if asked shall not be required to answer, any question relating to such an offence, notwithstanding that the question would otherwise be admissible under Article 2 of the Loi (1908) au sujet des témoins et informateurs⁷.

14 Determination of age

For the purposes of this Law, the age of a person shall be deemed to be or to have been that which appears to the court, after receiving any available evidence, to be or to have been the person's age at the material time.

15 Saving with regard to court proceedings involving children

Nothing in this Law shall derogate from the provisions of Articles 4 to 8 of the Criminal Justice (Evidence of Children) (Jersey) Law 2002⁸ and Article 73 of the Children (Jersey) Law 2002.

PART 3**REMAND****16 Remand of children, young persons and young adults**

- (1) This Article applies to a person who is a child, young person or young adult.
- (2) Where a person to whom this Article applies is lawfully remanded in custody, the person must be remanded to –
 - (a) secure accommodation if the person is a child;
 - (b) subject to paragraph (3), an appropriate place of custody if the person is a young person;
 - (c) a young offender institution if the person is a male young adult; or
 - (d) the prison if the person is a female young adult.
- (3) If a young person is required to be remanded in custody before a decision can be taken by the Panel determining an appropriate place of custody, the young person shall, pending such decision, be remanded to secure accommodation unless, in the opinion of the court or person who orders the person to be remanded in custody, having regard to all the relevant circumstances at the time –
 - (a) in the case of a male young person, a young offender institution is considered to be more suitable for meeting his particular needs, including where no accommodation, or no suitable accommodation, is available in secure accommodation for him; or
 - (b) in the case of a female young person, the prison is considered to be more suitable for meeting her particular needs, including where no accommodation, or no suitable accommodation, is available in secure accommodation for her.
- (4) Without prejudice to the exercise of powers under Article 10, the Panel shall determine the appropriate place of custody for a young person who is remanded in accordance with paragraph (3) as soon as reasonably practicable and, in any event, within 72 hours or such other period as the Minister may specify by Order, from the time the young person is so remanded.

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- (5) A place to which a person is remanded under paragraph (2) or (3) is referred to in this Article as a “place of custody”.
 - (6) A person to whom this Article applies who is being detained for the purposes of, or whilst, being conveyed to a place of custody, shall be deemed to be in lawful custody.
 - (7) A person who –
 - (a) knowingly assists or induces a person to whom this Article applies to escape from a place of custody;
 - (b) without lawful authority takes a person to whom this Article applies away from a place of custody; or
 - (c) knowingly harbours or conceals a person to whom this Article applies who has so escaped or been taken away, or prevents the person from returning to a place of custody,shall be guilty of an offence and liable to a fine and imprisonment for a term of 2 years.
 - (8) The Bailiff or a Jurat may issue a warrant remanding in custody a person to whom this Article applies and a person who is so remanded, or a person to whom this Article applies who is remanded in custody pursuant to a court order, is a person lawfully remanded in custody for the purposes of this Article.

PART 4

YOUNG PERSON’S PLACEMENT PANEL

17 Young Person’s Placement Panel

- (1) The Young Person’s Placement Panel shall be established.
- (2) The Young Person’s Placement Panel shall be a body corporate with perpetual succession and may –
 - (a) sue and be sued in its corporate name; and
 - (b) so far as is possible for a body corporate, exercise the rights and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

18 Functions of the Panel

The Panel shall have the following functions –

- (a) determining the appropriate place of custody for a young person to serve a sentence of youth detention or to be remanded in custody;
- (b) reviewing its decision concerning its placement of a young person in an appropriate place of custody within one month of the start of such placement and thereafter at intervals not exceeding 3 months and, where it thinks it appropriate to do so, requiring that young person to be moved to another appropriate place of custody (if available);

- (c) in the case of a female young person who is detained in the prison in exercise of powers under Article 7, 10 or 16, reviewing the initial decision to place her in prison within a week of the start of such placement and, thereafter, at intervals not exceeding 1 month and, where it thinks appropriate to do so, requiring that she be moved to an appropriate place of custody;
- (d) making assessments of young persons for the purpose of exercising its functions under this Article;
- (e) making arrangements for the delivery of a child or young person to such place of detention as the Royal Court directs under Article 5(2) or (4).

19 Matters to be taken into account by the Panel when exercising its functions

In exercise of its functions under Article 18, the Panel shall consider what is in the best interests of the young person and of any other person who is or may be detained in the same place having regard to –

- (a) the behaviour of the young person;
- (b) any likely impact of the behaviour of other persons detained in a place of custody on the young person and any likely impact of the behaviour of the young person on other persons detained in the same place;
- (c) the views of the young person;
- (d) the opinion of any person having parental responsibility for the young person;
- (e) the educational needs of the young person;
- (f) such other matters as the Panel considers relevant; and
- (g) such other matters as the Minister may direct under Article 20.

20 Functions of the Minister

The Minister may issue directions to the Panel concerning the policies and any criteria which the Panel must take into account under Article 19 when exercising its functions under Article 18.

21 Powers of the Panel

The Panel shall have the powers necessary or expedient to perform its functions including entering into contracts or other arrangements with any person for the purpose of exercising its functions.

22 States to make Regulations concerning the Panel

The States shall, by Regulations, make provision for the appointment of members of the Panel and their removal, the holding of meetings of the Panel, rights of appeal by a young person against decisions of the Panel, and all such other matters relating to the constitution and governance of the Panel as the States think fit.

23 Liability

- (1) No person to whom this Article applies shall be liable in damages for anything done or omitted to be done in the discharge of any functions under this Law.
- (2) Paragraph (1) does not apply –
 - (a) if it is shown that the act or omission was done in bad faith; or
 - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that such act or omission was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000⁹.
- (3) This Article applies to –
 - (a) the Panel and to any member of the Panel;
 - (b) the Youth Court and to any member of the Youth Court;
 - (c) to the Governor and to anyone acting on his or her behalf.

PART 5**THE YOUTH COURT****24 Youth Court**

- (1) The Youth Court established under the Criminal Justice (Young Offenders) (Jersey) Law 1994¹⁰ shall continue.
- (2) The Youth Court shall have the jurisdiction conferred upon it by this or any other enactment.
- (3) The Schedule shall have effect in relation to the constitution and procedures of the Youth Court.
- (4) Subject to the provisions of this Law, the provisions of any other enactment relating to the practice and procedure in the Magistrate's Court shall apply to the practice and procedure in the Youth Court.

25 Persons to whom this Part applies

A person to whom this Part applies is a child or young person.

26 Jurisdiction of Youth Court

- (1) The Youth Court shall have the same powers as are vested in the Magistrate's Court and shall have jurisdiction to hear charges against persons to whom this Part applies regardless of whether such a person attains the age of 18 before proceedings are completed, but, subject to paragraph (2) –
 - (a) a charge made jointly against a person to whom this Part applies and a person who has attained the age of 18 years shall be heard by the Magistrate's Court and not by the Youth Court;

- (b) where a person to whom this Part applies is charged with an offence, the charge may be heard by the Magistrate's Court if a person who has attained the age of 18 years is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting that offence;
 - (c) where, in the course of proceedings before the Magistrate's Court, it appears that the person to whom the proceedings relate is a person to whom this Part applies, nothing in this paragraph shall be construed as preventing the Magistrate's Court, if it thinks fit, from continuing with the hearing and determination of those proceedings.
- (2) Notwithstanding the fact that the Magistrate's Court has heard a case involving a person to whom this Part applies, where that person is convicted of an offence and is, on the date of conviction, still under the age of 18 years, the Court may remand the person in custody or on bail for sentence by the Youth Court.
 - (3) For the avoidance of doubt, it is declared that, in respect of a person to whom this Part applies, Article 3(2) of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949¹¹ concerning committing the accused for trial before the Royal Court shall apply as if the reference to the Magistrate were to the Youth Court.

27 Procedure in Youth Court

- (1) The Youth Court shall sit as often as may be necessary for the purpose of exercising the jurisdiction conferred on it by or under this Law or any other enactment and, unless there are no cases before the Court, it shall sit on at least one occasion in each week.
- (2) No person shall be present at a sitting of the Youth Court except –
 - (a) members and officers of the court;
 - (b) parties to the case before the court, their advocates and solicitors, and witnesses and other persons directly concerned in that case;
 - (c) *bona fide* representatives of newspapers, news agencies or sound or television broadcasting companies;
 - (d) such other persons as the court may specially authorize to be present.

28 Miscellaneous provisions as to powers of Youth Court

- (1) The Youth Court sitting for the purpose of hearing a charge against, or an application relating to, a person who is believed to be a person to whom this Part applies may, if it thinks fit to do so, proceed with the hearing and determination of the charge or application, notwithstanding that it is subsequently discovered that the person in question had attained the age of 18 years prior to the charge or application being made.
- (2) The attainment of the age of 18 years by a person in respect of whom a probation order or community service order is in force, or a person in whose case an order for conditional discharge has been made, shall not

deprive the Youth Court of jurisdiction to enforce the person's attendance and deal with the requirements of the probation order or community service order, or the commission of a further offence, or to amend or discharge the probation order or community service order.

29 Appeals from Youth Court

- (1) There shall be a Youth Appeal Court consisting of the Bailiff and 3 members of the panel appointed under paragraph 1 of the Schedule who were not members of the Youth Court from which the appeal is being heard.
- (2) A person convicted by the Youth Court may appeal to the Youth Appeal Court and the provisions of Part 5 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949, shall apply *mutatis mutandis* to any such appeal.

PART 6

REPEALS, TRANSITIONAL AND SAVINGS PROVISIONS AND CONSEQUENTIAL AMENDMENTS

30 Repeal of the Criminal Justice (Young Offenders) (Jersey) Law 1994

The Criminal Justice (Young Offenders) (Jersey) Law 1994¹² shall be repealed.

31 Children (Jersey) Law 2002 amended

In the Children (Jersey) Law 2002¹³ after Article 22(1) there shall be added the following paragraphs –

“(1A) A young person within the meaning of the Criminal Justice (Young Offenders) (Jersey) Law 201-¹⁴, who having been sentenced to youth detention or remanded in custody is required to be detained in secure accommodation shall be treated for the purposes of this Law as a child who is being looked after by the Minister.

(1B) Where paragraph (1A) applies the conditions in paragraph (1) and the remaining paragraphs of this Article do not apply.”.

32 Consequential amendments, savings and transitional provisions

The States may, by Regulations –

- (a) amend any enactment in consequence of any provision of this Law;
- (b) make such transitional provisions and savings as it considers necessary or expedient, including amendment of this Law, in respect of any provision of this Law.

PART 7
CLOSING

33 Citation

This Law may be cited as the Criminal Justice (Young Offenders) (Jersey) Law 201- and shall come into force on such day or days as the States may by Act appoint.

SCHEDULE

(Article 24)

CONSITUTION AND PROCEDURES OF YOUTH COURT**1 Appointment of members of Youth Court**

- (1) Subject to paragraph 2, the Youth Court shall be duly constituted if it consists of 3 members, one of whom is the Magistrate, who shall be the chairman, and one of whom is a woman (who may or may not be the Magistrate).
- (2) The members of the Youth Court other than the Magistrate shall be persons from a panel (hereinafter referred to as “the Youth Court Panel”) appointed for the purpose by the Superior Number of the Royal Court.
- (3) Every member of the Youth Court Panel shall, on appointment, take an oath to discharge the duties attached to that office well and faithfully.
- (4) No person shall remain on the Youth Court Panel for longer than 10 years and a member of the panel shall retire on the member’s 60th birthday.
- (5) The Superior Number of the Royal Court may make such appointments to, or deletions from, the Youth Court Panel as it considers necessary.

2 Proceedings

- (1) If a member of the Youth Court (other than the chairman) before which any proceedings take place absents himself or herself, the member shall cease to act further in those proceedings and the Court shall be duly constituted to continue those proceedings while it consists of the chairman and the other remaining member.
- (2) Where the trial of any matter is adjourned after the defendant has been convicted and before the defendant is sentenced or otherwise dealt with, the Youth Court which deals with the defendant need not be composed of the same members as that which convicted the defendant.
- (3) If, amongst members of the Court which sentences or deals with an offender, there are any who were not sitting when the defendant was convicted, the Court shall before sentencing or otherwise dealing with the defendant, make such inquiry into the facts and circumstances of the case as will enable the members who were not sitting when the offender was convicted to be fully acquainted with those facts and circumstances.
- (4) For the purpose of dealing with a remand of a defendant or the adjournment of any matter or an application for bail, the Youth Court may be duly constituted by the chairman sitting alone.

3 Decisions of Youth Court

- (1) The decision of the Youth Court on any matter shall be by a majority of the members and shall be pronounced by the chairman, or another

member at the request of the chairman, and no other member of the court shall make a separate pronouncement on the matter.

- (2) Where the chairman and one other member only attend and remain present during the sitting of the court, the decision of the court shall, in the event of disagreement between the chairman and that other member, be the decision of the chairman and shall be pronounced by the chairman.
- (3) Where during or after the hearing and before the determination of a matter before the Youth Court it appears to the chairman that there is, or is likely to be, a difference of opinion between the members, the chairman shall cause the deliberations of the court on that matter to be conducted in private, and may if the chairman thinks fit adjourn the case for that purpose.

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- 1* chapter 08.180
 - 2* chapter 23.775
 - 3* chapter 08.020
 - 4* chapter 12.200
 - 5* chapter 08.320
 - 6* chapter 08.200
 - 7* chapter 07.910
 - 8* chapter 08.250
 - 9* chapter 15.350
 - 10* chapter 08.380
 - 11* chapter 07.595
 - 12* L.6/1994 (chapter 08.380)
 - 13* chapter 12.200
 - 14* P.93/2014